

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TROY ARTIS BROWN and CHERIE  
MORGAN BROWN,

Plaintiffs,

v.

C.D.H., a minor child, and  
JONATHAN DOUGLAS HAGLER,  
on behalf of the minor child,

Defendants.

NO: 13-CV-5126-TOR

ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND

BEFORE THE COURT is Plaintiffs' Motion to Remand (ECF No. 6). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

This is an adoption case that was originally filed in the Family Court of the Fifth Judicial Circuit for the State of South Carolina. Defendant Jonathan Hagler ("Hagler"), the biological father of C.D.H., removed the case to this Court pursuant

1 to 28 U.S.C. § 1331, arguing that the case presents federal questions under the  
2 Fourteenth Amendment to the U.S. Constitution and the Parental Kidnapping  
3 Prevention Act (“PKPA”), 28 U.S.C. § 1738A. Plaintiffs now move to remand the  
4 case for lack of federal question jurisdiction. For the reasons discussed below, the  
5 Court will grant the motion.

#### 6 DISCUSSION

7 Hagler’s notice of removal alleges that subject matter jurisdiction is proper  
8 under 28 U.S.C. § 1331 because “the Petition to involuntarily terminate [his]  
9 parental rights filed in South Carolina family court is a civil action that creates  
10 federal questions under the Constitution, laws or treaties of the United States.”  
11 ECF No. 1 at 11. The crux of Hagler’s argument is that Plaintiffs are depriving  
12 him of due process under the Fourteenth Amendment by attempting to terminate  
13 his parental rights in a court which lacks personal jurisdiction over him and which  
14 lacks authority to modify custody orders previously issued by courts in the State of  
15 Washington. ECF No. 1 at 11-12. Plaintiff further suggests that federal question  
16 jurisdiction exists under the Parental Kidnapping Prevention Act, which generally  
17 requires that state courts give full faith and credit to child custody orders issued by  
18 a court in a different state. ECF No. 1 at 12.

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1       **A. Removal Under 28 U.S.C. 1441**

2           Title 28 United States Code, Section 1441(a) provides that an action filed in  
3 state court which presents a federal question may be removed “to the district court  
4 of the United States *for the district and division embracing the place where such*  
5 *action is pending.*” 28 U.S.C. § 1441(a) (emphasis added). Removal of this case  
6 to the Eastern District of Washington was improper because the underlying action  
7 was filed in South Carolina state court. Although this Court has discretion to  
8 transfer the case to the District of South Carolina, *see Tanzman v. Midwest Exp.*  
9 *Airlines, Inc.*, 916 F. Supp. 1013, 1017 (S.D. Cal. 1996), it will decline to do so for  
10 want of subject matter jurisdiction.

11       **B. Due Process**

12           Hagler’s argument that the adoption proceedings initiated in South Carolina  
13 violate his right to due process is unavailing. The hallmarks of procedural due  
14 process under the Fourteenth Amendment are notice and an opportunity to be  
15 heard. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313-314  
16 (1950). The record reflects that Hagler has appeared and actively participated in  
17 the South Carolina family court proceedings with the assistance of counsel. The  
18 record also reflects that the South Carolina family court and the Spokane County  
19 Superior Court held a joint hearing at which all parties appeared to determine  
20 which court had jurisdiction over the adoption proceeding. ECF No. 7, Ex. C.

1 Thus, Hagler has been afforded an opportunity to be heard in *both* state courts on  
2 the issues he raises in his notice of removal. Assuming for the sake of argument  
3 that due process violations of the type Hagler asserts could give rise to federal  
4 question jurisdiction, there is simply no basis for doing so on this record.

5 To the extent that Plaintiff believes that the South Carolina family court  
6 lacks personal jurisdiction over him, he is free to litigate that issue in the South  
7 Carolina state courts. This Court will not express an opinion on whether personal  
8 jurisdiction over Plaintiff is proper in South Carolina family court.

### 9 **C. Parental Kidnapping Prevention Act**

10 There is no private right of action to enforce the PKPA in federal court.  
11 *Thompson v. Thompson*, 484 U.S. 174, 187 (1988) (“[T]he context, language, and  
12 history of the PKPA together make out a conclusive case against inferring a cause  
13 of action in federal court to determine which of two conflicting state custody  
14 decrees is valid.”). The PKPA therefore does not give rise to federal question  
15 jurisdiction over this case. *La Maina v. Brannon*, 804 F. Supp. 607, 612 (D. N.J.  
16 1992). Given that there is no basis for exercising federal question jurisdiction, this  
17 case must be remanded to the Family Court of the Fifth Judicial Circuit for the  
18 State of South Carolina.

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1       **D. Award of Attorney's Fees and Costs**

2       Plaintiffs have requested an award of attorney's fees and costs pursuant to  
3 28 U.S.C. § 1447(c). Section 1447(c) provides, in relevant part, that "[a]n order  
4 remanding [a] case may require payment of just costs and any actual expenses,  
5 including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c).  
6 "Absent unusual circumstances, courts may award attorney's fees under § 1447(c)  
7 only where the removing party lacked an objectively reasonable basis for seeking  
8 removal. Conversely, where an objectively reasonable basis exists, fees should be  
9 denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). The Court  
10 finds that Hagler, as a *pro se* litigant, had a sufficiently reasonable basis for  
11 attempting to remove this case under the PKPA. Although *Thompson* forecloses  
12 such removal, a reasonable *pro se* litigant in Plaintiff's position could be excused  
13 for failing to locate this authority in view of the facial applicability of the statute to  
14 the facts alleged in the notice of removal. Accordingly, Plaintiffs' request for  
15 attorney's fees and costs is denied.

16       **IT IS HEREBY ORDERED:**

17       Plaintiffs' Motion to Remand (ECF No. 6) is **GRANTED**. This case is  
18 hereby **REMANDED** to the Family Court of the Fifth Judicial Circuit for the State  
19 of South Carolina for all further proceedings.

1 The District Court Executive is hereby directed to enter this Order, furnish  
2 copies to counsel and Defendant Jonathan Hagler at his address of record, mail a  
3 certified copy to the Family Court of the Fifth Judicial Circuit for the State of  
4 South Carolina, and **CLOSE** the file.

5 **DATED** December 27, 2013.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge